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EXAMINER

EIDE, HEIDI MARIE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Drawings

The drawings were received on September 17, 2009. These drawings are not acceptable. The drawings contain new matter which was not submitted with the originally filed disclosure. No new matter should be entered.

Specification

The amendments to the specification submitted on September 17, 2009 have not been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Weissman 4,990,088.

Weissman discloses a starter drill capable of piercing the hardest outer layer of a bone during oral surgery before using one or more osteotomes for preparing a cavity for a dental implant, the starter drill having a quadrangular section 13 drilling end (col. 3, ll. 54-57) that is small in section and an end 22 fir engagement to a surgical motor (col. 3, ll.49-54). Weissman does not specifically teach the drill functioning as claimed,

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however, the drill is capable of functioning as claimed, therefore the claimed limitations are met.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi (2002/0094508) in view of Weissman 4,990,088 in view of Lazzara et al. (6,290,499) in view of Misch et al 6,068,480 (Misch) further in view of Hollander et al. 6,319,005 (Hollander). Lorenzi discloses a kit of motor-driven instruments comprising osteotomes of progressive diameters (par. 29), the osteotomes having an apical end, threaded conical section and a threaded upper section, and an polygonal adjustment area (figure 1) in which connectors are engaged (par. 22), two drills of different diameters comprising ends for connection to a surgical motor (figure 2, par. 29), and connector for coupling to a dental drill or surgical hand wrench (par 22, 33) and the kit comprises a starter drill having an end section that is smaller in section than the osteotomes and an end for engagement to a surgical motor (par. 31). The starter drill is capable of piercing the hardest outer layer of a bone during oral surgery before using one ore more osteotomes. Lorenzi teaches the invention as substantially claimed and discussed above, however, not specifically teach the starter drill having a quadrangular

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section end, the polygonal adjustment area capped by a cylindrical projecting section that includes a circular recess in which an O-ring seal is housed, the connectors each have an end having a blind axial recess and the second connector having a different cross-sectional shape than the first connector and the osteotome comprises a threaded cylindrical section.

2. Weissman teaches a dental drill comprising a quadrangular-section drilling end 13 (col. 3, ll. 54-57). It would have been obvious to one of ordinary skill in the art to modify the starter drill of Lorenzi with the quadrangular drilling end as taught by Weissman as a matter of obvious design choice since it has held that the configuration of the claimed end section was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed end section was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 VI B). Lorenzi/Weissman teaches the invention as substantially claimed and discussed above, however, does not teach the polygonal adjustment area capped by a cylindrical projecting section that includes a circular recess in which an O-ring seal is housed, the connectors each have an end having a blind axial recess and the second connector having a different cross-sectional shape than the first connector and the osteotome comprises a threaded cylindrical section.

3. Lazzara teaches a instrument for fixing dental implants comprising dental component having an end capped by a cylindrical projecting section creating a circular recess 132 in which an O-ring seal 168 is housed. It would have been obvious to one having ordinary skill in the art to further modify the adjustment area of

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Lorenzi/Weissman to have the shape taught by Lazzara in order to secure components of the instruments and as an obvious matter of choice since it has held that the configuration of the claimed adjustment section was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed adjustment section was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 VI B).

Lorenzi/Weissman/Lazzara teaches the invention as substantially claimed and discussed above, however, does not specifically teach the connectors each have an end having a blind axial recess and the second connector having a different cross-sectional shape than the first connector and the osteotome comprises a threaded cylindrical section.

4. Misch teaches connectors having different cross-sectional shapes as illustrated in fig. 4A the connector for a motor driven instrument and in fig. 5, a manual driven instrument. Misch teaches instrument for fixing dental implants comprising connector having an end comprising a blind axial recess with a polygonal section incorporating the o-ring seal (figure 5). It would have been obvious to one having ordinary skill in the art to modify Lorenzi/Weissman/Lazzara with the connector taught by Misch in the set of instruments in order to connect the working part of the instrument to a driving part. Lorenzi/Weissman/Lazzara/Misch teaches the invention as substantially claimed and discussed above, however, does not specifically teach the osteotome comprises a threaded cylindrical section.

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5. Hollander teaches a conical section followed by a cylindrical section (see abstract, col. 1, ll. 55-60). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lorenzi/Weissman/Lazzara/Misch with the conical and cylindrical section taught by Hollander as a matter of obvious design choice since it has held that the configuration of the claimed section was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed section was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 VI B) and in order to create a geometry in the jaw the is complementary to the implant (col. 2, ll. 18-22).

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi 2002/0094508 in view of Hollander et al. 6,319,005 (Hollander).

7. Lorenzi teaches a rotary osteotome for widening of a dental implant site comprising an elongated body having an apical end followed by a threaded conical section and a threaded upper section, with the threaded upper section capped by an adjustment area in which a drive connector is configured to be engaged (par. 22, fig. 1). Lorenzi teaches the invention as discussed above, however does not show the osteotome comprises a threaded cylindrical section.

8. Hollander teaches a conical section followed by a cylindrical section (see abstract, col. 1, ll. 55-60). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Lorenzi in view of Hollander as a matter of

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obvious design choice since it has held that the configuration of the claimed section was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed section was significant (*In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) MPEP 2144.04 VI B) and in order to create a geometry in the jaw the is complementary to the implant (col. 2, ll. 18-22).

Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lorenzi (2002/0094508) in view of Hollander as applied to claim 18 above, and further in view of Lazzara et al. (6,290,499).

Lorenzi/Hollander teaches the invention as substantially claimed and discussed above, however, does not teach the adjustment area having a polygonal section capped by a cylindrical projection section that includes a circular recess and an O-ring seal housed in the recess and a drive connector having a recess of the polygonal cross section complementary to the polygonal section projection of the adjustment area and the O-ring engageable with an insides surface of the recess of the drive connector.

Lazzara teaches instrument for fixing dental implants comprising dental component having an end capped by a cylindrical projecting section creating a circular recess 132 in which an O-ring seal 168 is housed. The drive connector is capable of being releasably engaged with the adjustment area and configured to be driven to rotate the osteotome. It would have been obvious to one having ordinary skill in the art to modify Lorenzi/Hollander with the connector of Lazzara in order to secure components of the instruments.

Response to Arguments

Applicant's arguments with respect to claims 1 and 22 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed September 17, 2009 have been fully considered but they are not persuasive. Applicant argues that the pilot drill of Lorenzi is not a starter drill that is for piercing the hardest outer layer of a bone during oral surgery before using one or more osteotomes, however, it is well known in the art that a pilot drill is for drilling a pilot hole in the bone, before drilling the implant bore. Further applicant is arguing functional limitations and intended use. In response to applicant's argument that the pilot drill is not able to pierce the hardest outer layer of a bone, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant further argues that Lazzara does not teach an osteotome, however, Lazzara is not used to teach the limitation of the osteotome, but the limitation of an adjustment area, therefore applicant's argument is moot.

Applicant further argues that Hollander refers to a drill and not an osteotome, however, Hollander is used to teach the limitation of the cylindrical section and conical section. Applicant states that the particular claimed configuration does have significance which was pointed out in the response filed 2/28/09. It is noted that the Hollander teaches the shape serves the same significance (col. 2, ll. 18-22). Therefore,

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as stated in the above rejection, it would have been obvious to modify the prior art with the shape taught by Hollander in order to provide a bore that is compatible with implant that is to be inserted in to the bore.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HEIDI M. EIDE whose telephone number is 571-270-3081. The examiner can normally be reached on Mon-Thurs.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Heidi Eide
Examiner
Art Unit 3732

/Heidi M Eide/
Examiner, Art Unit 3732

12/8/2009

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732